



FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEES

GEORGIA DEPARTMENT OF NATURAL RESOURCES
2070 U.S. HIGHWAY 278, SE
SOCIAL CIRCLE, GEORGIA 30025
TELEPHONE: 706/557-3020

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(A)
16 USC 1539(a)(1)(B)
16 USC 703-712

REGULATIONS (Attached)

50 CFR §§ 13, 17, & 21

3. NUMBER

TE014977-2

4. RENEWABLE

☒ YES

☐ NO

5. MAY COPY

☒ YES

☐ NO

6. EFFECTIVE

06/01/2005

7. EXPIRES

SEE BLOCK 9

8. NAME AND TITLE OF PRINCIPAL OFFICER (if # 1 is a business)

MR. DAN FORSTER, DIRECTOR

9. TYPE OF PERMIT

ENDANGERED SPECIES -INCIDENTAL TAKE (EXPIRES 5/31/2030)
AND SAFE HARBOR (EXPIRES 5/31/2099)

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

THIS PERMIT IS AVAILABLE TO ALL NON-FEDERAL LANDOWNERS IN THE STATE OF GEORGIA, SUBJECT TO ELIGIBILITY REQUIREMENTS AS IDENTIFIED IN THE PERMITTEE'S HABITAT CONSERVATION PLAN AND AS CONDITIONED HEREIN.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND AUTHORIZED AGENTS.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND ITS AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.

XX BLOCK 11 OF THIS PERMIT CONSISTS OF ITEMS A - DD (27 PAGES TOTAL).

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS 11.S AND 11.T OF THIS PERMIT.

ISSUED BY

TITLE

DATE

DEPUTY REGIONAL DIRECTOR, FWS,
SOUTHEAST REGION

6/1/05

ORIGINAL

Conditions 11.E through 11.U apply to both the Incidental Take Permit that supports the Mitigated Incidental Take option, and the Enhancement of Survival Permit that supports the Safe Harbor Management Agreement option of the Permittee's July 20, 1999 Habitat Conservation Plan (HCP):

- E. The Permit Area will consist of those lands identified in Block 10. All non-federal landowners are eligible to participate in the HCP, although participation in the HCP shall be at the Permittee's discretion in accordance with the goals and procedures outlined in the HCP. The Permittee may or may not be the owner of land for which actions covered under the Permit are applied or intended. The Permit Area may be reduced, at the request of the Permittee, subject to the conditions, terms, and amendment processes described herein and detailed in Condition 11.H of this Permit.

Within the Permit Area, activities authorized by this Permit include all actions associated with the implementation of the Permittee's HCP, entitled "A Conservation Plan for Red-cockaded Woodpeckers (*Picoides borealis*) on Private Lands" and dated July 20, 1999, that incidentally take *Picoides borealis*, the covered species, and subject to the stated Conditions herein. The biological goals and objectives of this Permit are to: (1) consolidate the current distribution of extant *Picoides borealis* groups across the Permit Area that are eligible for participation in the Mitigated Incidental Take option of the Permittee's HCP into at least one geographic area (or Mitigation Site, as defined in Condition 11.W.4) in order to create one or more demographically-stable *Picoides borealis* populations that shall be managed in perpetuity; and (2) encourage stability of other existing *Picoides borealis* populations through improved habitat management resulting from Landowner Agreements developed through the Safe Harbor Management Agreement option of the Permittee's HCP.

- F. This permit also constitutes a Special Purpose Permit under 50 C.F.R. §21.27 for the take of *Picoides borealis* in the amount and/or number specified in Conditions 11.V and 11.AA.1 and subject to the terms and conditions of the permit, including any *Picoides borealis* groups that are above established Safe Harbor Management Agreement baselines that may occupy the Permit Area, subject to the stated terms and conditions of this permit. Any such take of *Picoides borealis* will not be in violation of the Migratory Bird Treaty Act of 1918 as amended (16 U.S.C. §§ 703-712).
- G. With reasonable advance notice, the Permittee and Cooperating Landowners shall permit U.S. Fish and Wildlife Service personnel, or other properly permitted and qualified

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G. (continued.)

persons designated by the U.S. Fish and Wildlife Service, to enter the properties covered by the HCP at reasonable hours and times for the general purposes specified in Title 50 Code of Federal Regulations § 13.21(e)(2).

H. The Permittee and the U.S. Fish and Wildlife Service agree that modification and amendments to the Permittee's HCP and this Permit may occur through its effective term. The Permit is based upon the Permittee's expected compliance with the provisions and commitments established in the final HCP and the Permit's stated terms and conditions identified herein. Where a conflict occurs between the HCP and this Permit, the Permit shall control. The following procedures shall govern the modification and amendment process:

1. Either the Permittee or the U.S. Fish and Wildlife Service may propose modifications and/or amendments to the HCP or this Permit by providing written notice. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on the covered species. This analysis shall be conducted jointly between the Permittee and the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.S. The Permittee and the U.S. Fish and Wildlife Service will use their best efforts to respond to a proposed modification or amendment within sixty (60) days of receipt of such notice. Absent any objection from either party, the proposed modification and/or amendment will be determined as minor and shall become effective upon written approval by the other party.
2. The U.S. Fish and Wildlife Service will not propose or approve minor modifications or amendments to the HCP or this Permit if the U.S. Fish and Wildlife Service determines that such modifications would result in operations under the HCP and/or Permit that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional take of the covered species not analyzed in connection with the original HCP.

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I. (Continued).

3. The Permittee shall uniquely band all captured *Picoides borealis* with standard U.S. Geological Survey aluminum bands and plastic, colored bands.
4. The Permittee and the U.S. Fish and Wildlife Service will meet on an as-needed basis to review the information produced in implementation of the HCP and this Permit. These meetings will provide an opportunity for resolutions of disputes regarding the Permit implementation and to discuss amendments or modifications to this Permit. Said meetings will be mutually-agreed upon, as will a list of potential attendees and potential discussion topics.

J. This Permit does not authorize the incidental take of any other federally listed plant and/or animal species. In the event other federally listed plant and/or animal species are found to occur in the Permit Area and are found to be adversely affected by the Permittee's activities and actions associated with implementation of this Permit, the Permittee agrees to meet with the U.S. Fish and Wildlife Service and develop appropriate management measures to preclude the potential for unauthorized taking. If activities proposed by the Permittee will result in incidental taking of these other species, the Permittee shall have the option of formally amending this Permit by the procedures outlined in Condition 11.H.

The following procedures shall be utilized by the Permittee to address other federally listed wildlife and plant species that are present or likely to be present on properties seeking inclusion into this Permit:

1. Flatwoods Salamander (*Ambystoma cingulatum*): The Permittee and/or its designees will coordinate with the contact office of the U.S. Fish and Wildlife Service noted in Condition 11.S to develop and implement site-specific management guidelines for any participating Cooperating Landowner that has a previously-known or newly-discovered *Ambystoma cingulatum* population. This Condition will terminate on such date as *Ambystoma cingulatum* is removed from the list of federal endangered or threatened species.
2. Bald Eagle (*Haliaeetus leucocephalus*): The Permittee and/or its designees will coordinate with the contact office of the U.S. Fish and Wildlife Service noted in Condition 11.S to implement the Habitat Management Guidelines for the Bald

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J. 2. (Continued).

Eagle in the Southeast Region for any participating Cooperating Landowner that has a previously-known or newly-discovered *Haliaeetus leucocephalus* nesting territory. This Condition will terminate on such date as *Haliaeetus leucocephalus* is removed from the list of federal endangered or threatened species

3. **Eastern Indigo Snake (*Drymarchon corais couperi*)**: The Permittee and/or its designees will coordinate with the contact office of the U.S. Fish and Wildlife Service noted in Condition 11.S to develop and implement site-specific management guidelines for any participating Cooperating Landowner that has a previously-known or newly-discovered *Drymarchon corais couperi* population. This Condition will terminate on such date as *Drymarchon corais couperi* is removed from the list of federal endangered or threatened species.
4. **Federally Listed Plant Species**: The Permittee and/or its designees will coordinate with the contact office of the U.S. Fish and Wildlife Service noted in Condition 11.S to determine the best management measures to implement for any participating Cooperating Landowner that has a previously-known or newly-discovered population of a federally listed plant species.
5. **Other Federally Listed Species**: The Permittee and/or its designees will coordinate with the U.S. Fish and Wildlife Service office identified in Condition 11.S to determine the best management measures to implement for any participating Cooperating Landowner if one or more new or previously unconsidered species is added to the list of federal endangered or threatened species.

- K. When federal candidate plant or animal species are known to occur on the participating Cooperating Landowners, the Permittee and/or its designees will coordinate with the U.S. Fish and Wildlife Service office identified in Condition 11.S to determine **measures for inclusion** in the Landowner Agreement to aid in the conservation of those species. If such measures are included in the Landowner Agreement, the U.S. Fish and Wildlife Service will not impose additional requirements on the participating Cooperating Landowner as a result of any such species later being listed as federally threatened or endangered.

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- L. Upon locating a dead, injured, or sick *Picoides borealis*, or other species that may be covered in the future, in the course of administering this permit, initial notification must be made immediately to the U.S. Fish and Wildlife Service Law Enforcement Office, 1000 Business Center Drive, Parkway Business Center, Suite 10, Savannah, Georgia 31405. Notification must also be made by the next work day to the U.S. Fish and Wildlife Service office identified in Conditions 11.S and 11.T. If authorized by the U.S. Fish and Wildlife Service, care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or to preserve biological materials for later analysis. In conjunction with the care of sick or injured endangered species or preservation of biological materials from a dead animal, the finder should take responsible steps to ensure that the site is not unnecessarily disturbed.
- M. The Permittee will be responsible for ensuring that all personnel involved in *Picoides borealis* monitoring, translocation, and habitat management are trained and qualified to implement the handling, transportation, relocation, banding, artificial cavity creation, and/or other population enhancement techniques required by this Permit. In the absence of adequately trained staff, the Permittee will use qualified contractors for all such activities.
1. All personnel involved in trapping, banding, translocation, feeding, or otherwise handling *Picoides borealis* eggs, nestlings, and/or adults will be properly trained and certified by experienced trainers. Experienced trainers are individuals that have performed the referenced activity or activities:
 - a. For a duration of at least two years;
 - b. On at least 50 nestlings and adults (except for translocation and associated feeding which requires experience with at least 20 *Picoides borealis*); and
 - c. In varied situations and under different environmental and ecological conditions.
 2. Individuals who have not been previously involved with transporting and feeding *Picoides borealis* will, prior to transporting birds, contact the U.S. Fish and Wildlife Service's Red-cockaded Woodpecker Coordinator, at (864) 656-2432, regarding required translocation procedures.

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M. (Continued).

3. All personnel installing artificial cavities (inserts and drilled) will be properly trained and certified by experienced trainers. Experienced trainers are individuals that:
 - a. Developed the cavity insertion techniques;
 - b. Have successfully installed at least 15 cavity inserts; or
 - c. Have successfully installed at least 25 drilled cavities, and have read, and become familiar with, the techniques described by Copeyon (1990), Allen (1991), and Taylor and Hooper (1991).
4. All personnel that will install cavity restrictors must read and follow the recommendations in, "Restrictors for Red-cockaded Woodpecker Cavities" (Carter *et al.* 1989).
5. The following specific measures are necessary to minimize and/or eliminate take that may be associated with *Picoides borealis* management activities:
 - a. No nets used to trap *Picoides borealis* will be left unattended during trapping activities;
 - b. All nestlings will be lowered to the ground and raised to the cavity in an appropriate container (e.g., a soft bag or other appropriate container) and not transported up-and-down the ladder with personnel;
 - c. Improperly positioned leg bands will not be removed once in place, but improperly attached bands and bands that could cause injury may be removed and replaced if necessary and no permanent injury will result; and
 - d. All active cavity trees will be protected from fire during prescribed burning operations utilizing accepted methods including, but not limited to: (1) raking around or back firing from the base of the tree, (2) using a "wet" line or foam line around the tree or entire cluster, and (3)

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M. 5. d. (Continued).

mechanically removing vegetation. In addition, all active trees lost and all active cavities destroyed by prescribed fire will be replaced within 48 hours.

6. The Permittee's staff or its designees must be qualified to implement the minimization tasks outlined in the Permittee's HCP. The following minimum experience levels are required before staff of the Permittee will be considered qualified and thus, "certified" to perform the specified activity(ies) on their own.
- a. Banding nestlings: noose and band the young of 5 nests, but not less than 10 nestlings.
 - b. Banding adults: net, extract from the net, and band 10 adults.
 - c. Transporting/feeding adults: In addition to discussing the procedures with the U.S. Fish and Wildlife Service office listed in Condition 11.S, first time translocation biologists will be accompanied, during the move, by at least one individual who has transported *Picoides borealis* before.
 - d. Installing drilled cavities: install at least 5 drilled cavities and 2 drilled starts.
 - e. Installing cavity inserts: install at least 3 cavity inserts.

N. Beginning in 2001, and continuing for the duration of this permit, the Permittee will submit an annual report to U.S. Fish and Wildlife Service Offices appearing in Conditions 11.S and 11.T of this permit. The first report will be due January 31, 2001. The annual report shall also include the following certification from a responsible official who supervised or directed the preparation of the report:

"Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete."

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N. (Continued).

The annual report shall outline and describe the following items associated with implementation and success of this Permit.

The Permittee shall annually complete the U.S. Fish and Wildlife Service Regional Annual Red-cockaded Woodpecker (*Picoides borealis*) Population Data Report; however, participating landowners need not complete this form. A copy of the Population Data Report form is attached to this permit and incorporated by reference. Any of the following information not provided by the Population Data Report form shall be appended in an appropriate format:

1. The Permittee shall identify any material non-compliance and all measures employed to remediate such non-compliance.
2. An accurate map depicting all portions of the Permit Area that harbor *Picoides borealis*, noting any changes, additions, deletions or other modifications made to said portions of the Permit Area affected by implementation of this Permit.
3. A summary of any modifications and/or amendments submitted and approved/denied during the reporting period, including a narrative summary of any changes made to the baseline responsibilities.
4. An accounting of incidental take events which occurred during the reporting period affecting the baseline responsibilities and the Mitigation Area(s).
 - a. As *Picoides borealis* clusters and groups are surveyed and monitored, report each group's composition; the number of cavity trees in the cluster; the number of replacement or potential cavity trees available in the cluster (as determined by a 20 percent cruise of the cluster no less frequently than once every 5 years); the identity of each cavity tree (its number or designation); the number of cavities in each tree; the status of each cavity (active/inactive); and the status of each cluster (active /inactive).
 - b. A map of each cluster as such maps are prepared during the monitoring interval for each cluster, and thereafter provide maps whenever there is a change to the cluster area boundary or the location of cavity trees within

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N. 4. b. (Continued).

the cluster. This information should be provided in GIS (ARC/INFO compatible) format.

c. Annually report the installation of restrictor plates by cavity tree number and the affected *Picoides borealis* cluster number. When artificial cavity inserts are provided, report the *Picoides borealis* cluster for which the inserts were provided, the location of the insert tree within the cluster, and the identification or designation assigned to the tree with the insert.

d. Report all management activities within a cluster, including hardwood control and method used (mechanical, fire, herbicides); timber harvest; placement of unimproved roads; etc.

5. The Permittee shall annually provide a list of the authorized and qualified personnel involved in implementation of the HCP and the requirements of the Permit.

6. The total number of participating Cooperating Landowners with federally listed species, other than *Picoides borealis*, present will be reported annually by the Permittee. The Permittee shall report pertinent information on such other species that includes the size of the population (if known), the location(s) of the population(s), evidence of reproduction or other demographic trends (if known), and potential threats to population(s) (if known).

7. To ensure adequate oversight of beneficial *Picoides borealis* management activities by the Permittee, the following monitoring requirements will be implemented

a. Installing drilled cavities: All drilled cavities will be maintained according to the schedule provided on pages 19-22 of "A Modification of Copeyon's Drilling Technique for Making Artificial Red-cockaded Woodpecker Cavities (Taylor and Hooper 1991). The Permittee will annually report the total number of drilled cavities installed per *Picoides borealis* group and the number that leaked (any time during the maintenance examinations);

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N. 7. (Continued).

- b. **Installing cavity inserts:** All cavity inserts will be inspected to ensure that the insert was not cracked during installation causing resin to leak into the roost chamber. The total number of cavity inserts installed per *Picoides borealis* group and the number that leaked will be reported annually.
- c. **Cavity restrictors:** The total number of cavity restrictors installed per *Picoides borealis* group will be reported annually. If evidence of cavity use by a resident *Picoides borealis* is not documented within one year of installation, the restrictor will be adjusted and/or removed and an alternate cavity provided. All cavity restrictors will be installed and adjusted pursuant to the guidelines published by Carter *et al.* (1989);
- d. **Translocation:** The disposition of all translocated birds will be reported annually to the U.S. Fish and Wildlife Service. The Permittee or its designee will monitor all translocated birds according to the following schedule: (1) On the morning of release, observe but do not follow birds until they leave vicinity of the cluster. Return to the cluster and check for the birds in 5-7 days. If still present, check in 1 month; if still present, schedule group for breeding season monitoring, including monitoring of eggs, nestlings and fledglings, and (2) If the released bird is not present at the 5-7 day check, recheck status at 5-7 day intervals for the next month. If the bird returns, recheck status in 5-7 days, and then follow the long-term schedule listed above. If after 1 month, the bird is not present, recheck 2-3 times during the breeding season (mid-April through early June);
- e. **Prescribed Burning:** The total number of active clusters prescribed burned will be reported annually. The number of active cavity trees and active cavities destroyed by prescribed burning will also be reported, along with any known losses of nest cavities/eggs/nestlings. The number of artificial cavities installed to replace the lost cavities will also be reported.

8. Permittee shall provide the band numbers and color combinations, age, sex, location, and dates banded of all banded *Picoides borealis* in the annual report.

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N. (Continued).

9. Reporting responsibilities specific to the Safe Harbor Management Agreement option of the Permittee's HCP shall include:

- a. Copies of all Certificates of Inclusion and Landowner Agreements executed during the reporting period.
- b. Copies of all further consultation and coordination products issued by the U.S. Fish and Wildlife Service to address any other federally proposed, listed, or candidate wildlife and plant species likely to be present on properties seeking inclusion into this Permit.
- c. A narrative explanation describing the number of participating Cooperating Landowners, the relative value of inclusion of these Cooperating Landowners to the overall goal of the HCP and this Permit, and the number of *Picoides borealis* clusters potentially created or enhanced as a result of the specific management activities performed under each Landowner Agreement.
- d. A summary of the location(s) and circumstance(s) where incidental take of *Picoides borealis* was anticipated and/or occurred. Identify the Cooperating Landowner, the number of birds, and whether or not the translocation(s) was (were) performed. If a translocation was performed, the Permittee shall identify the Mitigation Area(s), the number of birds translocated, and discuss the results of the effort.

O. The U.S. Fish and Wildlife Service agrees to maintain the confidentiality of any information or data submitted by or on behalf of Permittee in the annual report required by Condition 11.N. In addition, the U.S. Fish and Wildlife Service agrees to maintain the confidentiality of any information or data submitted by or on behalf of the Permittee pursuant to this Permit which the Permittee has designated as proprietary, commercially or financially sensitive, or confidential, to the maximum extent allowed by law. The U.S. Fish and Wildlife Service shall provide written notice to the Permittee upon receiving a request by any other agency or party for such information or data or a record including such information or data. In the event that the U.S. Fish and Wildlife Service determines that it may be required to disclose the information or data to the requesting agency or

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O. (Continued).

other party, it shall provide to the Permittee written notice thereof a minimum of twenty-one (21) working days prior to the anticipated date of disclosure, to allow the Permittee to object and to take appropriate action to seek to prevent the disclosure or assure that the requesting party will likewise maintain the confidentiality of the information or data with respect to further disclosure.

P. The Permittee shall establish a review committee for the purpose of determining those RCW groups eligible for the Mitigated Incidental Take option of the HCP as described in the final HCP and incorporated here by reference. The review committee shall consist of at least three members who have at least five years experience with RCWs and RCW habitat management, but the same three members will not necessarily review each RCW group that is proposed for inclusion in the Mitigated Incidental Take option. The review committee's recommendation as to whether or not a particular RCW group is eligible to participate in the Mitigated Incidental Take option of the HCP shall be reviewed by the U.S. Fish and Wildlife Service pursuant to Condition 11.W.5.

Q. The Permittee and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts to *Picoides borealis*, changes in circumstances could arise which were not fully anticipated by this permit and which may result in substantial and adverse change in the status of *Picoides borealis*. The U.S. Fish and Wildlife Service's policy regarding changed and unforeseen circumstances is contained in the final "No Surprises" rule published on February 23, 1998 (63 Federal Register 8859) and codified at 50 C.F.R. Part 17. The U.S. Fish and Wildlife Service finds that the HCP and Permit meet the requirements of the "No Surprises" rule and agrees to implement it fully through this Permit to the maximum extent allowed by law.

For purposes of this Permit, the term "changed circumstances" means changes in circumstances affecting the *Picoides borealis*, or any species covered by the Permit should it be amended in the future. The listing of any new species, the addition of a species to the Permit, or the designation of critical habitat are not changed circumstances. The term "properly implemented HCP" means the HCP and Permit whose commitments and provisions have been or are being fully implemented by the Permittee. The term "unforeseen circumstances" means a change in circumstances affecting the *Picoides borealis*, or any species covered by the Permit should it be amended in the future, and

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Q. (Continued).

that result in a substantial and adverse change in the status of the *Picoides borealis* or any other species covered by the Permit.

Because the HCP has adequately covered the Permit species and their conservation needs the U.S. Fish and Wildlife Service hereby agrees that it will not seek further mitigation from the Permittee to address changed circumstances related to the *Picoides borealis*, or any other species covered by the Permit in the future, as long as the HCP is being properly implemented (i.e., the Permittee is in compliance with the terms and conditions of this Permit and the HCP). Changes in operational or management prescriptions resulting from the monitoring or adaptive management provision designed to support the landscape, and wildlife measures in the Permit or HCP are neither changed nor unforeseen circumstances even though such changes may require more or less restrictions on operations than were provided for under the original Permit and HCP.

R. Only in the case of unforeseen circumstances may the U.S. Fish and Wildlife Service seek additional mitigation from the Permittee for covered species. The U.S. Fish and Wildlife Service has the burden of demonstrating that unforeseen circumstances actually exist using the best scientific and commercial data available. The U.S. Fish and Wildlife Service's findings of unforeseen circumstances must be clearly documented and based upon reliable, technical information regarding the status and habitat requirements of the affected species.

In determining whether unforeseen circumstances exist, the U.S. Fish and Wildlife Service will consider, but not be limited to, the following factors: the size of the current range of the affected *Picoides borealis*, or any other species covered by the Permit in the future; the percentage of the range adversely affected by the HCP; the percentage of range conserved by the HCP; the ecological significance of that portion of the range affected by the HCP; the level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected Permit species in the wild.

If the U.S. Fish and Wildlife Service determines that additional mitigation is required due to unforeseen circumstances, such mitigation shall be provided on lands mutually agreeable to the Permittee and the U.S. Fish and Wildlife Service to the maximum extent

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R. (Continued).

possible. Only if the protective measures available on then-existing federal land are insufficient may the U.S. Fish and Wildlife Service seek additional mitigation from the Permittee, which in any event shall be limited to modifications of the HCP.

In such cases, the original terms of this Permit and the HCP will be maintained to the maximum extent possible. In no case shall additional mitigation requirements involve the contribution of additional compensation, land, or water, or involve additional restrictions on the use of land, water (including quantity and timing of delivery), or other natural resources, including harvestable timber, otherwise available for development or use beyond the level agreed upon in this Permit and HCP, as the same may be amended from time to time, without the consent of the Permittee.

If the U.S. Fish and Wildlife Service makes a finding of unforeseen circumstances, during the period necessary to determine whether additional mitigation can be provided on lands mutually agreeable to the Permittee and the U.S. Fish and Wildlife Service or to seek additional mitigation from the Permittee if necessary, the Permittee and the U.S. Fish and Wildlife Service will work closely to avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

S. For purposes of monitoring compliance and administration of the terms and conditions of this permit, the contact office of the U.S. Fish and Wildlife Service is:

Field Supervisor
U.S. Fish and Wildlife Service
247 South Milledge Avenue
Athens, Georgia 30605
Telephone: (706) 613-9493
Facsimile: (706) 613-6059

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- T. Copies of reports and any other documentation submitted in response to the operation and management of this permit shall also be provided to:

Endangered and Threatened Species Permits
U.S. Fish and Wildlife Service (AES/TE/P)
1875 Century Boulevard, Suite 200
Atlanta, Georgia 30345
Telephone: (404) 679-7110
Facsimile: (404) 679-7081

Field Supervisor
U.S. Fish and Wildlife Service
Department of Forest Resources
261 Lehotsky Hall, Box 341003
Clemson, South Carolina 29634-1003
Telephone: (864) 656-2432
Facsimile: (864) 656-1350

- U. For purposes of administration of this Permit, the primary contact for the Permittee shall be:

Chief, Non Game and Natural Heritage Section
Georgia Department of Natural Resources
2070 U.S. Highway 278, S.E.
Social Circle, Georgia 30025
Phone: (770) 761-3035
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Conditions 11.V through 11.X apply specifically to the Incidental Take Permit that supports the Mitigated Incidental Take option of the Permittee's HCP:

- V. The Permittee is authorized to take 19 groups of *Picoides borealis* and all cavity trees associated with those 19 *Picoides borealis* groups, located on the lands identified in Block 10 that are participating in the HCP's Mitigated Incidental Take option, following successful implementation of mitigation of *Picoides borealis* groups as described in section 2.1.5 of the HCP and subject to the stated terms and conditions herein.

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W. The following measures will be employed by the Permittee to ensure that incidental take of *Picoides borealis* is minimized and mitigated by implementation of the HCP, as discussed below:

1. Within the Permit Area, the Permittee will have, upon the effective date of this Permit, authority for the incidental take of nineteen (19) *Picoides borealis* groups. The Permittee and/or Cooperating Landowner may not incidentally take any extant *Picoides borealis* group until the mitigation allowable under the Permittee's HCP has been implemented and is determined by the Permittee to be successful. For instance, as a new *Picoides borealis* group is successfully created, the Permittee has the option to incidentally take an existing *Picoides borealis* group, as long as a 1:1 ratio (created:taken) is maintained.
2. Successful creation of a single bird group or multiple, same-sex bird group will occur when a provisioned site is occupied over a 6-month period including the breeding season and all required foraging and supporting habitat is identified and conserved as specified in Conditions 11.W.4.b-c. Successful creation of a *Picoides borealis* potential breeding pair is defined as when a provisioned site is occupied (as evidenced by observations of copulation during the breeding season, eggs, or nestlings; or observation of the same two adults (one male and one female) at a site over a 6-month period including the breeding season), and all required foraging and supporting habitat is identified and conserved as specified in Conditions 11.W.4.b-c.
3. Under this Permit, a potential breeding pair group can serve as mitigation for the taking of: (1) a breeding pair with one or more helpers, (2) a breeding pair without helpers, (3) a potential breeding pair, (4) a multiple (same sex) bird group, or (5) a single bird group. A multiple (same sex) bird group can serve as mitigation for the taking of a multiple (same sex) bird group or a single bird group. A single bird group will serve as mitigation for the taking of a single bird group.
4. The Permittee shall establish one or more sites as *Picoides borealis* Mitigation Areas. Potential Mitigation Areas shall have the following features:
 - a. For sites mitigated pursuant to section 2.1.5.2 of the Permittee's HCP, the site shall contain at least two thousand (2,000) contiguous acres of currently- or potentially-suitable *Picoides borealis* habitat. High-quality

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W. 4. a. (Continued).

habitat, which is defined as pine (*Pinus* spp.) stands greater than 50 years old that exhibit a park-like condition, is preferred.

- b. For sites mitigated pursuant to section 2.1.5.2 of the Permittee's HCP, the site shall be capable of providing all of the necessary habitat requirements for at least ten (10) *Picoides borealis* groups as determined by the U.S. Fish and Wildlife Service's guidance that is applicable at the time each site is established, or, for sites mitigated pursuant to section 2.1.5.1 of the Permittee's HCP, the site shall be capable of providing all of the necessary habitat requirements for the number of *Picoides borealis* groups necessary to complete mitigation requirements. The current guidance on the necessary amount of habitat required for private lands is contained in the U.S. Fish and Wildlife Service's 1992 Draft RCW Procedures Manual, which is available from the U.S. Fish and Wildlife Service's contact offices listed in Condition 11.T.
- c. For sites mitigated pursuant to sections 2.1.5.1 and 2.1.5.2 of the Permittee's HCP, the site(s) shall be capable of providing the habitat conditions necessary to maintain and sustain any *Picoides borealis* groups currently present and any *Picoides borealis* groups that are translocated subsequently to the site(s) via appropriate land management activities, including, but not limited to, forest thinning, prescribed burning, and hardwood mid-story control, as well as a schedule to fund and implement other measures necessary to ensure longevity of all *Picoides borealis* groups present.

5. Incidental taking of *Picoides borealis* groups shall be authorized, subject to the following terms and conditions:

- a. The Permittee shall submit written notification to the U.S. Fish and Wildlife Service at least sixty (60) days prior to a scheduled activity that could result in incidental take of the affected *Picoides borealis* group. Such notice shall be accompanied by sufficient locational information, as well as the following biological information: habitat conditions supporting the affected group and cluster, group composition, and a discussion of the

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W. 5. a. (Continued).

relationship between the affected group and the nearest known *Picoides borealis* population. Further, information must be provided by the Permittee establishing that environmental effects do not exist beyond those previously considered in the U.S. Fish and Wildlife Service's environmental analysis supporting issuance of this permit

- b. Except as otherwise indicated, the U.S. Fish and Wildlife Service must provide written concurrence within sixty (60) days of receiving notification from the Permittee pursuant to Condition 11.W.5.a that the affected *Picoides borealis* group(s) is (are) available for incidental take or must provide supporting rationale as to why the incidental take event is not authorized. Absent any such objection from the U.S. Fish and Wildlife Service, the incidental take of the affected *Picoides borealis* group(s) is (are) authorized after the aforementioned sixty (60) day period. If extraordinary circumstances exist as discussed in 40 C.F.R. 1508.4, the U.S. Fish and Wildlife Service will not approve incidental take of the affected *Picoides borealis* group(s) without supplemental environmental analysis. To obtain approval for those groups so affected, the Permittee shall coordinate with the U.S. Fish and Wildlife to prepare the necessary supplemental environmental analysis, so as to resolve any extraordinary circumstances.
- c. As defined in Conditions 11.W.1-3, an equal number of *Picoides borealis* group(s) must be successfully created at a Mitigation Area established pursuant to Condition 11.W.4. If a Mitigation Area is chosen, the Permittee must ensure that each newly created group has sufficient and appropriate foraging habitat as identified in Conditions 11.W.4.b-c. If the Permittee offers another location and that site meets the criteria established in Condition 11.W.4, such lands will be managed in accordance with Condition 11.W.4 to ensure that each group has sufficient and appropriate foraging habitat. In all cases, "success" and "appropriate composition groups" will be defined in Conditions 11.W.1-3.
- d. The goal of an incidental take event is to avoid disrupting *Picoides borealis* breeding and/or nesting behavior, any eggs, or nestlings. As a

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W. 5. d. (Continued).

result, the incidental take event may be carried out only during August 1 through March 31 of any year, unless otherwise specifically authorized by the U.S. Fish and Wildlife Service.

- e. Prior to the incidental take event, the Permittee or its qualified designee shall affix aluminum and color leg bands on all affected *Picoides borealis* and subsequently translocate these birds to other suitable site(s) approved by the U.S. Fish and Wildlife Service after conferring with the Permittee.

In evaluating the extent of minimization and mitigation required, if any, of the Permittee under this Condition, the U.S. Fish and Wildlife Service will consider and factor the amount of mitigation or overall net benefits provided to the species within the Permit Area by the Permittee's operating conservation program and management activities conducted under the HCP and Permit from the effective date of this Permit. Any post-termination mitigation must benefit primarily species for which a mitigation deficit exists and not result in the incidental take of any listed species or otherwise violate applicable federal laws or regulations. In reaching its determinations as to the extent of mitigation or overall net benefits provided the species within the Permit Area under the Permit and HCP, the U.S. Fish and Wildlife Service will work closely with the Permittee and use the best scientific and commercial data available.

- X. The Permittee shall develop a plan for prioritization of RCW groups eligible for take under the Mitigated Incidental Take option of the HCP based upon the decision(s) of the review committee established pursuant to Condition 11.P and shall submit this plan to the U.S. Fish and Wildlife Service office identified in Condition 11.S for review and concurrence.

Conditions 11.Y - 11.DD apply specifically to the Enhancement of Survival Permit that supports the Safe Harbor Management Agreement option of the Permittee's HCP:

- Y. Permittee is authorized to extend the provisions of this Permit to non-federal landowners who enter into a Landowner Agreement with the Permittee, as well as their successors in interest, via a Certificate of Inclusion. Execution of the Certification of Inclusion and the accompanying Landowner Agreement (Agreement) identified in Condition 11.Z results in the landowner becoming a Cooperating Landowner for purposes of implementation of

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Y. (Continued).

this Permit. The following eligibility requirements are mandatory prior to a Certificate of Inclusion and Agreement being executed between the Permittee and a Cooperating Landowner:

1. The Cooperating Landowner owns real property within the geographic area identified in Block 10 of this Permit.
2. The Landowner Agreement follows the template "Cooperative Safe Harbor Management Agreement" found in Appendix 3 of the submitted HCP or the template "Cooperative Safe Harbor Management Agreement - 2005 Updated Version". The use of the latter is hereby authorized by this Permit amendment. Earlier versions of the two aforementioned documents are considered valid so long as the Cooperating Landowner enrolled prior to the date of the controlling amendment.

Upon ratification of an Agreement the Cooperating Landowner is subject to the following conditions:

- a. The agreed upon *Picoides borealis* habitat improvements have been carried out;
- b. The Cooperating Landowner agrees to maintain *Picoides borealis* baseline responsibilities (i.e., any existing *Picoides borealis* groups and associated habitat);
- c. Activities expected to result in the incidental taking of *Picoides borealis* clusters may be carried out only during the non-reproductive season of August 1 through March 31 of any year, unless otherwise authorized by the U.S. Fish and Wildlife Service offices in Conditions 11.S and 11.T; and,
- d. The Cooperating Landowner shall notify the U.S. Fish and Wildlife Service and Permittee at least 60 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any

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Y. 2. d. (Continued).

clusters or groups of *Picoides borealis* under the permit and the Safe Harbor Agreement. Such notification will provide the Service with an opportunity to translocate affected groups of the species, if possible and appropriate.

e. The Cooperating Landowner agrees, where appropriate and necessary, to implement protection measures identified by the Georgia Department of Natural Resources and/or U.S. Fish and Wildlife Service personnel for other federal or state listed or candidate wildlife or plant species.

3. Cooperating Landowners agree to allow U.S. Fish and Wildlife Service or Georgia Department of Natural Resources personnel, or appropriately permitted and qualified designees of either agency, to enter the property for the purpose of ascertaining, using appropriate survey methodology, the status of *Picoides borealis* likely to be present and to conduct compliance inspections and monitoring pursuant to the permit.

4. The Cooperating Landowner shall notify the Service and Permittee of any transfer of lands subject to the Landowner Agreement.

5. The U.S. Fish and Wildlife Service must concur with the Permittee's determination of the baseline responsibilities and anticipated biological benefits as identified in the Landowner Agreement prior to its execution.

6. The Certificate of Inclusion must, at a minimum, incorporate the template language as specified in Condition 11.Y.8.

7. The term of the Cooperating Landowner's commitment to management and enhancement activities as indicated in the Landowner Agreement must match the term of the Certificate of Inclusion.

8. A valid Certificate of Inclusion must be executed based upon the following template:

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Y. 8. (Continued).

CERTIFICATE OF INCLUSION

This certifies that the current and future owners of the following property [describe] are included within the scope of Federal Fish and Wildlife Permit No. TE014977-0, issued on (**enter date**) for a period of 99 years to the Georgia Department of Natural Resources Wildlife Resources Division (WRD) under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(B). Such permit authorizes certain activities by participating landowners as part of a conservation plan to restore and enhance habitat for the endangered red-cockaded woodpecker (*Picoides borealis*). Pursuant to that permit and this certificate, the current and future landowners of the above-described property are authorized to engage in any activity on such property that may result in the incidental taking of red-cockaded woodpeckers, subject only to the terms and conditions of such permit and the terms and conditions of Cooperative Safe Harbor Management Agreement No. ___ entered into pursuant thereto by the WRD and [**enter name of Cooperating Landowner**] on [**enter date**].

(WRD Representative)

(Date)

(Cooperating Landowner)

(Date)

Z. The following elements are mandatory for a valid Landowner Agreement. The Permittee shall use the "Cooperative Safe Harbor Management Agreement" contained in Appendix 3 of the HCP, and the "Cooperative Safe Harbor Management Agreement - 2005 Updated Version".

1. The Cooperating Landowner and Permittee must jointly sign the Landowner Agreement and agree with all of the included conditions and stipulations, including all restrictions and requirements of the Permittee's HCP.

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Z. (Continued.)

2. The Cooperating Landowner agrees to allow U.S. Fish and Wildlife Service personnel, personnel from the Georgia Department of Natural Resources, or these agencies' designated representatives to enter the property identified in the Landowner Agreement for general purposes as specified in this Permit and in 50 CFR §13.21(e)(2).
 3. The Landowner Agreement specifies that the participating Cooperating Landowner is encompassed by the protections and responsibilities of this Permit, and ensures that all compliance and monitoring aspects of this Permit will be adhered.
 4. A description of the property to which the Landowner Agreement applies and an explanation of the Cooperating Landowner's baseline responsibilities toward *Picoides borealis*, and any other state and/or federally proposed, listed, or candidate wildlife and plant species likely to be present on the property.
- AA. The following measures will be employed by the Permittee to ensure that incidental take of *Picoides borealis* groups that are created as a result of Safe Harbor Management Agreements is minimized and mitigated by implementation of the HCP, as discussed below:
1. Within the Permit Area, the Permittee shall have, upon the effective date of this Permit, authority for the incidental take of all *Picoides borealis* groups that are created that represent increases above established Safe Harbor Management Agreement baseline responsibilities. The Permittee and/or Cooperating Landowner may not incidentally take any extant, Safe Harbor (i.e., above baseline) *Picoides borealis* group until the provisions of Condition 11.AA.2 are met.
 2. Incidental taking of *Picoides borealis* groups shall be authorized, subject to the following terms and conditions:
 - a. The Permittee shall submit written notification to the U.S. Fish and

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2. a. (continued.)

Wildlife Service at least sixty (60) days prior to a scheduled activity that could result in incidental take of the affected *Picoides borealis* group. Both the Permittee and the U.S. Fish and Wildlife Service shall have the option of removing affected groups and translocating these *Picoides borealis* to other suitable locations identified by the U.S. Fish and Wildlife Service.

b. Incidental take shall be carried out only during August 1 through March 31 of any year, unless otherwise specifically authorized by the U.S. Fish and Wildlife Service.

c. If *Picoides borealis* groups are translocated, the Permittee or its qualified designee shall affix aluminum and color leg bands on all affected *Picoides borealis* and subsequently translocate these birds to other suitable site(s) approved by the U.S. Fish and Wildlife Service after conferring with the Permittee.

BB. If the agreement with an individual participating Cooperating Landowner is terminated, incidental take of safe harbor groups/birds (i.e., above baseline) is authorized within the effective term of this permit provided the following conditions are met:

1. The Cooperating Landowner provides the U.S. Fish and Wildlife Service and/or the Permittee with information stating that the *Picoides borealis* to be taken are safe harbor groups/birds (i.e., above baseline);
2. The Cooperating Landowner provides the U.S. Fish and Wildlife Service and/or the Permittee a minimum of 60 (sixty) days written notice to translocate the subject birds; and,
3. Incidental take will take place only during the non-reproductive season of August 1 through March 31 of any year, unless otherwise authorized by the U.S. Fish and Wildlife Service offices identified in Conditions 11.S and 11.T.

The Permittee shall develop a plan for prioritization of landowner enrollment into the Safe Harbor Management Agreement option of the HCP and shall submit this plan to the

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2. a. (continued.)

Wildlife Service at least sixty (60) days prior to a **scheduled activity** that could result in incidental take of the affected *Picoides borealis* group. Both the Permittee and the U.S. Fish and Wildlife Service **shall have the** option of removing affected groups and translocating these *Picoides borealis* to other suitable locations identified by the U.S. Fish and Wildlife Service.

b. Incidental take shall be carried out only during August 1 through March 31 of any year, unless otherwise specifically authorized by the U.S. Fish and Wildlife Service.

c. If *Picoides borealis* groups are translocated, the Permittee or its qualified designee shall affix aluminum and color leg bands on all affected *Picoides borealis* and subsequently translocate these birds to other suitable site(s) approved by the U.S. Fish and Wildlife Service after conferring with the Permittee.

BB. If the agreement with an individual participating Cooperating Landowner is terminated, incidental take of safe harbor groups/birds (i.e., above baseline) is authorized within the effective term of this permit provided the following conditions are met:

1. The Cooperating Landowner provides the U.S. Fish and Wildlife Service and/or the Permittee with information stating that the *Picoides borealis* to be taken are safe harbor groups/birds (i.e., above baseline);
2. The Cooperating Landowner provides the U.S. Fish and Wildlife Service and/or the Permittee a minimum of 60 (sixty) days written notice to translocate the subject birds; and,
3. Incidental take will take place only during the non-reproductive season of August 1 through March 31 of any year, unless otherwise authorized by the U.S. Fish and Wildlife Service offices identified in Conditions 11.S and 11.T.

The Permittee shall develop a plan for prioritization of landowner enrollment into the Safe Harbor Management Agreement option of the HCP and shall submit this plan to the

(continued.)

U.S. Fish and Wildlife Service office identified in Condition 11.S for review and concurrence.

The following literature citations are provided for the Permittee's use to meet conditions provided in the Permit:

1. Allen, D.H. 1991. An insert technique for constructing artificial red-cockaded woodpecker cavities. U.S. Forest Service, Southeastern Forest Experiment Station, General Technical Report SE-73. 19 pp.
2. Carter, J.H. III, R.J. Walters, S.H. Everhart, and P.D. Doerr. 1989. Restrictors for red-cockaded woodpecker cavities. Wildlife Society Bulletin 17:68-72.
3. Copeyon, C.K. 1990. A technique for constructing cavities for the red-cockaded woodpecker. Wildlife Society Bulletin 18:303-311.
4. Taylor, W.E., and R.G. Hooper. 1991. A modification of Copeyon's drilling technique for making artificial red-cockaded woodpecker cavities. U.S. Forest Service, Southeastern Forest Experiment Station, General Technical Report SE-72. 31 pp.

END